

STATE OF MICHIGAN
COURT OF APPEALS

FRAN FERRIS,

Plaintiff-Appellant,

v

TRINITY HEALTH CORPORATION, and
TRINITY CONTINUING CARE SERVICES,

Defendants-Appellees.

UNPUBLISHED

August 8, 2006

No. 258122

Washtenaw Circuit Court

LC No. 03-000525-CZ

Before: Cavanagh, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

In this wrongful discharge action, plaintiff appeals as of right the trial court's September 9, 2004, order granting summary disposition to defendants. We affirm.

Plaintiff's employment at the Huron Woods Adult Care Facility (Huron Woods) was terminated on August 17, 2001. Huron Woods is a long-term care facility for elderly patients who are suffering from a mentally or physically debilitating condition. It is a subsidiary of Mercy Continuing Care Services (Mercy), which is now known as Trinity Continuing Care Services. Trinity Continuing Care Services is a subsidiary of Trinity Health Corporation.

Plaintiff argues that the trial court erred in granting summary disposition to defendants because she was not given reasonable notice of defendants' termination of her just-cause employment status. We review de novo a trial court's decision on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary disposition brought under MCR 2.116(C)(10) may be granted where there is no genuine issue of material fact, except as to the amount of damages. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The trial court must consider the pleadings, affidavits, depositions, admissions, and any other evidence to determine whether a genuine issue of material fact exists to warrant trial. *Id.* We review the record in the same manner as the trial court to determine whether the movant was entitled to a judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998).

"Generally, and under Michigan law by presumption, employment relationships are terminable at the will of either party." *Lytle v Malady (On Rehearing)*, 458 Mich 153, 163; 579 NW2d 906 (1998). However, the presumption of employment at will may be rebutted by:

(1) proof of “a contractual provision for a definite term of employment or a provision forbidding discharge absent just cause”; (2) an express agreement, either written or oral, regarding job security that is clear and unequivocal; or (3) a contractual provision, implied at law, where an employer’s policies and procedures instill a “legitimate expectation” of job security in the employee. [*Id.* at 164 (footnotes omitted).]

Here, plaintiff was promised just-cause employment status when she was hired in October 1997. At that time, however, her employer was United Management Retirement Company, Inc (UMRC). Mercy, a subsidiary of St. Joseph Mercy Hospital, contracted UMRC in 1995 to help establish, operate, and manage Huron Woods. UMRC and Mercy were entirely separate entities. UMRC’s responsibilities included hiring, firing, training, and disciplining the Huron Woods employees. UMRC also provided the employees’ payroll and benefits, and established the employment policies and procedures to be followed by the Huron Woods employees. Shortly before her employment began, plaintiff signed a Letter of Offer, in which she acknowledged her receipt of the UMRC Employee Handbook and agreed to be bound by its policies and procedures. The handbook included a policy that provided for a just-cause employment relationship following the completion of a six-month probationary period.

While employed by UMRC, plaintiff had an express promise of just-cause employment status. However, plaintiff’s employment status changed when the contract between UMRC and Mercy expired. At the expiration of the contract, UMRC permanently laid off every Huron Woods employee on December 31, 1999. Mercy hired them on January 1, 2000, when it took over the operations and management of Huron Woods.

Plaintiff argues that defendants’ failure to notify her of a change in her employment status created a legitimate expectation that her just-cause employment status continued, despite the change in employers. “[E]mployer policies and procedures may . . . become a legally enforceable part of an employment relationship *if* such policies and procedures instill ‘legitimate expectations’ of job security in employees.” *Rood v General Dynamics Corp*, 444 Mich 107, 117-118; 507 NW2d 591 (1993) (emphasis in original), citing *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 597; 292 NW2d 880 (1980). The legitimate expectations theory is based on public policy considerations, rather than contract principles. *Id.* at 118. In resolving whether an employee has demonstrated a legitimate expectation of job security, an inquiry must be made into what, if anything, the employer promised, and whether the promise is reasonably capable of instilling a legitimate expectation of just-cause employment in the employee. *Id.* at 138-140.

Plaintiff has failed to demonstrate that she was promised that her just-cause employment status would continue after December 31, 1999. UMRC twice gave all Huron Woods employees written notice that it would cease to be their employer on that date. The Huron Woods employees were notified that Mercy would become their employer when it assumed the operations and management responsibilities at Huron Woods. They were also notified of the date of their final UMRC-issued paycheck, that the 1999 W-2 would be their final UMRC tax document, and that their benefits would terminate when UMRC terminated their employment.

Dale Cole, UMRC’s Director of Human Resources, averred that he met with each employee to discuss the permanent layoff and the transition in employers. He advised each

employee that UMRC would be permanently terminating their employment and that, following the layoff, they could not rely on UMRC's employment policies or benefit plans. He informed the employees that under Mercy, there would be changes in policies, benefit plans, and potentially, wages. When the permanent layoffs occurred on December 31, 1999, UMRC issued final paychecks and canceled employees' benefits. Cole stated that he removed copies of UMRC's policies, including the employee handbook, from Huron Woods. Since that time, there has been no employment relationship between UMRC and Huron Woods employees. The evidence presented demonstrates that UMRC gave sufficient notice to the Huron Woods employees that its policies would no longer apply to plaintiff as of December 31, 1999.

Nevertheless, plaintiff maintains that she was not given reasonable notice of a change in employment policies. An employer may unilaterally change its written policy from just-cause employment to at-will employment, if the employer gives the affected employees reasonable notice of the policy change. *In Re Certified Question (Bankey v Storer Broadcasting)*, 432 Mich 438, 441; 443 NW2d 112 (1989). Plaintiff's reliance on this legal principle fails because this is not a case where an employer unilaterally changed its policies. Rather, there was a complete, well-publicized change in employers, and each employer had its own employment policies and procedures.

We cannot conclude that Mercy was bound by the employment policies of its predecessor, UMRC. Plaintiff presented no evidence that Mercy assented to a continuation of UMRC's policies. The evidence presented demonstrated the opposite because Mercy implemented its own set of employment policies and procedures when it assumed the operations and management of Huron Woods. On appeal, plaintiff admitted that "UMRC's express policies were abandoned by Mercy," and that Mercy instituted its own policies and procedures on January 1, 2000. Plaintiff therefore cannot now argue that she was employed under the terms set forth in UMRC's policies. On the record before this Court, we cannot conclude that UMRC's just-cause employment policy was effective after December 31, 1999, and plaintiff has failed to demonstrate a genuine issue of material fact regarding whether she had a legitimate expectation of just-cause employment with Mercy. Because this issue is dispositive of plaintiff's appeal, we decline to address the remaining issues raised by plaintiff. The trial court did not err in granting summary disposition to defendants.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael R. Smolenski
/s/ Michael J. Talbot